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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,838	10/03/2003	Kenneth F. Bailey	4946-006	1148
24112	7590	09/06/2006		EXAMINER
COATS & BENNETT, PLLC				FOX, CHARLES A
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RALEIGH, NC 27602				
			ART UNIT	PAPER NUMBER
				3652

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/678,838	BAILEY, KENNETH F.
	<b>Examiner</b>	<b>Art Unit</b>
	Charles A. Fox	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 June 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 and 40-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 40-55 is/are allowed.
- 6) Claim(s) 1-7, 9, 11-16, 18, 19, 21-26 and 28-30 is/are rejected.
- 7) Claim(s) 8, 10, 17, 20 and 27 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

The indicated allowability of claims drawn to the structure of the paddles is withdrawn in view of the newly discovered reference(s) to Lupton. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,2,4,5,7,11,12,14,16,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selhorst in view of Lupton. Regarding claims 1,2,11,12 and 19 Selhorst US 2,239,448 teaches a device for distributing material comprising:

a drum (5) disposed to rotate about a generally horizontal axis;

said drum having a plurality of outwardly extending blades;

wherein said material when passed over said drum covers an arc of at least 90° when viewed from said the side of said device. There is no critical proof that the speed of the drum is important, as such the Selhorst reference is considered a functional equivalent structure. Regarding the packing density it is assumed that all horizontal axis rotary throwers will pack chips at the claimed density absent any other information. He does not teach the paddles as having two distinct faces. Lupton GB 2,173,682 teaches a spreader with a drum comprising:

blades with a first leading face (106) and a second angled face (104);

said second face having a forward angle relative to said first face. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Selhorst with paddles as taught by Lupton to improve the distribution of material through the device.

Regarding claims 4,14 Selhorst also teaches that the arc is generally downward facing.

Regarding claim 5 Selhorst also teaches that the core of the drum has a non-circular cross section.

Regarding claims 7,16 Selhorst further teaches a feed chute upstream of said drum for feeding material to said drum.

Claims 6,9,15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selhorst and Lupton as applied to claims 1 and 11 above, and further in view of Kneer. Selhorst teaches the limitations of claims 1 and 11 as above, he does not teach driving the drum with a motor. Kneer US 4,820,108 teaches a device with a horizontal rotary thrower (3) that is driven by a motor and which is used to fill a container. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Selhorst with a motor in order to allow the device to operate independent from its movement across ground, thereby allowing the device to work while stationary.

Claims 21-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lupton. Regarding claims 21 and 25 Lupton teaches a device for spreading particulate material comprising:

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a drum disposed to spin about a horizontal axis;

a plurality of outward extending blades on said drum;

said blades having a first face section (106) and a second angled face section (1040 connected thereto;

said second face section forward facing. There is no critical proof that the speed of the drum is important, as such the Selhorst reference is considered a functional equivalent structure. While Lupton does not teach using their device with wood chips, It would have been obvious to one of ordinary skill in the art, at the time of invention that wood chips could have easily been spread using the Lupton device.

Regarding claims 22 and 30 and Lupton also teaches that the faces are generally planer and that said second face is angled at about 30 degrees relative to said first face.

Regarding claims 23 and 24 Lupton also teaches that said first face extends from said drum in a substantially radial direction.

Regarding claim 26 Lupton further teaches a feed chute for the drum assembly for introducing a particle stream to said drum.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lupton as applied to claim 21 above, and further in view of Kneer. Lupton teaches the limitations of claim 21 as above, he does not teach driving the drum with a motor. Kneer US 4,820,108 teaches a device with a horizontal rotary thrower (3) that is driven by a motor and which is used to fill a container. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Lupton

with a motor in order to allow the device to operate independent from its movement across ground, thereby allowing the device to work while stationary.

***Response to Amendment***

The amendments to the claims and specification have been entered into the record.

***Allowable Subject Matter***

Claims 40-55 are allowed.

Claims 8,10,17,20 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 8,10,17,20,27,40 and 48 have limitations dealing with dividers in an infeed chute which are not taught or suggested by the cited prior art.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Terminal Disclaimer***

The terminal disclaimer filed on June 26, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US patent 6,811,020 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Conn 11/2009 9-1-06*  
Charles A. Fox  
Examiner  
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